IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 24255 of 2004

Between:

1 Mohammed Abdul Ghaffar S/o Mohd. Adul Hussain
R/i H. No. 5/5/302, 303 and 304, Situated at Nampally Ekminar

Masjid, Hyderabad
2 Tayyaba begum W/o Mohammed Abdul Ghaffar
R/i H. No. 5/5/302, 303 and 304, Situated at Nampally Ekminar

Masjid, Hyderabad

..... PETITIONERS

AND

1 Assistant City Planner TP Circle No.6 Municipal

Corporation of Hyderabad Abids, Hyderabad
2 Commissioner Municipal Corporation of Hyderabad

Tankbund, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondent No. 1dt 16-12-2004 orally directing the petitioners to receive a cheque for Rs. 2,40.000/- and to handover the property bearing No. 5-5-302 and 304 respectively, situated at Nampally Ekaminar Masjid, Darusalam Road, Hyderabad for road widening, as illegal, arbitrary, null and void, violation of Sections 146 and 147 of HMC Act and also contrary to the Judgment of this Hon'ble Court made in WP No. 3052 of 2003 dated 19-2-2003 and to restrain the respondents from dispossessing the petitioners from their respective

premises, and pass such other order or orders.

Counsel for the Petitioner: MR.MOHD.ZIA-UL-HAQ

Counsel for the Respondents: MR.RAMA RAO GANTA

The Court at the stage of admission made the following:

ORDER:

The petitioners claim to be absolute owners of premises bearing Minicipal No.5-5-302, 5-5-303 and 5-5-304, situate at Ekminar Masjid, Darusalam Road, Nampally, Hyderabad. While so, on 16.12.2004 the 1st respondent approached the petitioners and offered a cheque for Rs.2,40,000/- towards compensation of the subject property and demanded them to hand over the same for the purpose of road widening, and when the petitioners refused, the 1st respondent threatened that they would demolish the structures in the process of road widening. Questioning the action of the 1st respondent, the present writ petition is filed.

Heard the learned counsel for the petitioners and the learned standing counsel for the respondents. Both the counsel agreed for disposal of the writ petition at the stage of admission.

Pursuant to notice issued by this Court, the learned Standing Counsel on instructions submitted that the petitioners are not interested to surrender their land and the municipality is proceeding to initiate steps under Land Acquisition Act, for acquisition of the land required for widening of the road.

In a similar matter of this nature, the Division Bench of this Court, while disposing of

W.P.No.21198/97, dated 03.02.1998, enunciated certain directions to be followed by Corporations, Municipalities and Panchayats in proceeding with the widening of the roads, which reads as follows:

1. Whether a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property;
2. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days prior notice notifying as to the nature of the property to which it belongs and the proposed action calling for explanation/objections, if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorized occupation and also determine whether the property in question belongs to Government, any other local self Government or authority or the occupants and pass appropriate orders, within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants;
3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith;
4. If the demolition is in respect of local bodies/Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction;
5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith;
6. If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures.

Learned Standing Counsel appearing for the respondents, does not dispute the legal position.

The writ petition is disposed of in terms of the above judgment and till the claim of the petitioner is decided status quo obtaining as on today shall be maintained. No costs.

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(N.V. RAMANA, J)

Dated: 27.01.2005

Dsr/Tvk

To:

1 Assistant City Planner TP Circle No.6 Municipal

Corporation of Hyderabad Abids, Hyderabad
2 Commissioner Municipal Corporation of Hyderabad

Tankbund, Hyderabad

3 Two CD copies

*Form-NIC-OGS/WP{**TRT**}*